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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF OF RESPONDENTS, AMBASSADOR STEEL COMPANY AND EWALD STEEL COMPANY IN OPPOSITION TO GRANTING OF THE PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

(For Attorneys, See Inside Front Cover)

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TO: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondents, Ambassador Steel Company and Ewald Steel Company, respectfully oppose the granting of a Writ of Certiorari to review the Judgment of the Michigan Court of Appeals, Division 1, entered in the above-entitled consolidated cases on December 2, 1968.

I. OPINIONS BELOW

The opinion of the Michigan Court of Appeals (Appendix A, *infra*), an appellate court of said State appears in 165 N.W. 2d 875 (1968).

The Opinion of the Michigan State Tax Commission dated January 26, 1967 is unreported and is hereto attached as Appendix B, *infra*.

Denial of Application for timely Leave to Appeal to the Michigan Supreme Court was issued March 20, 1969, as indicated in 165 N.W. 2d 875 (1968) and is marked Appendix C and is hereto attached.

Order of the Michigan Supreme Court on May 21, 1969 denying the Motion of the City of Detroit and the Board of Assessors of the City of Detroit to stay enforcement of an Order of this Court pending Petition for Certiorari to the Supreme Court of the United States is unreported and is presented in Appendix D attached hereto.

II. JURISDICTION

(1) Involved herein are appeals from the Michigan Court of Appeals which vacated certain assessments placed on Detroit's 1966 personal property rolls by the Michigan State Tax Commission against taxpayers. The Michigan Court of Appeals held that the taxpayers (respondents herein) were entitled to immunity from taxation thereof by virtue of Article I, Sec. 10, Cl. 2 of the Constitution of United States. (See Appendix A, *infra.*)

A timely application for leave to appeal filed with the Michigan Supreme Court by petitioners was denied March 20, 1969. (See Appendix C, *infra.*)

(2) Jurisdiction of this Court to deny writ of certiorari is invoked under C. 646, 62 Stat. 929. (28 U.S.C.A. 1257 (3)). This Brief applies to Respondents, Ambassador Steel Company and Ewald Steel Company.

III. QUESTION PRESENTED FOR REVIEW

This case gives rise to the question whether steel imported by Respondents from Japan and Continental Europe to port of Detroit are entitled to immunity from *ad valorem* taxation by the City of Detroit under the Import-Export Clause of the U. S. Constitution (Article I, Sec. 10, Cl. 2).

The Michigan Court of Appeals said, "Yes".
Petitioners-Plaintiffs say, "No".

IV. CONSTITUTIONAL PROVISION INVOLVED

The provision in Article I, Sec. 10, Cl. 2 of the United States Constitution reads as follows:

> "No State shall, without the Consent of the Congress, lay any Imports or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

V. STATEMENT OF THE CASE

The facts governing this case are stated in the Opinion of the Michigan Court of Appeals with severe brevity and they are based on the testimonial record and the cases cited by the Court. (See Appendix A, *infra*.) The critical facts which disclosed the background of the controversy are in substance as follows:

Some time prior to the present contest, the City of Detroit adopted the following "guide lines" to determine immunity from taxation under the U. S. Constitution:

> "1. Merchandise is purchased direct from a foreign mill or foreign distributor
>
> 2. The records and documents disclose an agency or representative relationship
>
> 3. The merchandise is held for resale without further processing and has been obtained under conditions set forth in 1 or 2 above."

On the basis of the above formula, the City Assessors held that the Respondents were not entitled to tax immunity from *ad valorem* taxation. Respondents appealed and maintained that they were entitled to tax immunity under the provisions of Article I, Sec. 10, Cl. 2 of the U. S. Constitution.

The Common Council of the City of Detroit sitting as a Review Board was in accord with Respondents' position, but advised counsel for the Board of Assessors to appeal the case to the Michigan State Tax Commission for a ruling.

The Michigan State Tax Commission admitted in its ruling of February 1, 1967 that:

> . . . "there are doubts as to whether or not the goods in question are 'imports' under Article I, Sec. 10, Cl. 2 of the U. S. Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation."

The commission further acknowledged the lack of sufficient expertise to determine the question in the following language:

> "The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.
>
> WHEREFORE, it is hereby ordered that the amount of $479,700 be placed upon the assessment roll as the true and lawful value of such property."

(For the full text, see Appendix B, *infra.*)

Respondents filed an Application for Leave to Appeal to the Michigan Court of Appeals and Briefs in Support of it. Counsel for Petitioners-Plaintiffs opposed Respondents' Leave to Appeal but failed to file a Brief in support of its Answer, and relied solely on the Brief filed by the Attorney General who appeared for the Michigan State Tax Commission. It is interesting to note that the Attorney General did not ask for a dismissal of the Application for Leave to Appeal as Petitioners-Plaintiffs did, but limited his protest as follows:

> "Appellee prays that this Honorable Court deny Appellant's Application for Leave to Appeal without prejudice to its institution of an action in the Circuit Court for Wayne County, adapted to resolution of the legal issue presented."

The Michigan Court of Appeals granted the leave to appeal and subsequently the 11 cases of all respondents were consolidated, arguments were heard from all counsels and the Michigan Court of Appeals reversed the determination of the Michigan State Tax Commission on December 2, 1968, as shown in Appendix A, *infra*.

Petitioners-Plaintiffs filed a timely Application for Leave to Appeal to the Michigan Supreme Court. The Michigan Supreme Court on March 20, 1960 denied said leave as follows:

> "On order of the Court (T. G. Kavanagh, Jr. not participating), the application for leave to appeal is considered, and the same is hereby DENIED, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is DENIED, as thereby being moot." (See Appendix C, *infra*.)

Thereafter, Petitioners-Plaintiffs filed a Motion to Stay Enforcement of an Order of the Michigan Supreme Court pending Petition for Certiorari to the Supreme Court of the United States.

On May 21, 1969, the Michigan Supreme Court denied the Motion to said enforcement as follows:

> "On order of the Court, the motion by the City of Detroit and the Board of Assessors of the City of Detroit, plaintiffs and appellants, to stay enforcement of an order of this Court pending petition for certiorari to the Supreme Court of the United States is considered, and the same is hereby DENIED, as no immediate emergency has been alleged or shown." (See Appendix D)

VI. ARGUMENT

Counsel for Petitioners studiously avoided mentioning the fact that the Attorney General in the initial Brief did not ask the Court of Appeals for affirmance of the ruling of the State Tax Commission, but, prayed that Respondents' Leave to Appeal be dismissed without prejudice so the case may be submitted

> "in the Circuit Court for Wayne County, adapted to resolution of the legal issue presented."

In other words, counsel sensed the illegitimacy of the State Tax Commission's opinion which failed to make a finding of fact and which confessed its inability to make a proper legal decision. The ruling of the State Tax Commission (Appendix B, *infra*) shows on the face of it, its invalidity and therefore, the Michigan Court of Appeals as an appellate tribunal was compelled to make a finding of fact on the basis of the testimonial record. Counsel for Petitioners,

in the previous Briefs argued that the efficient-cause-of-imports rationale advanced in *Hooven & Allison Co. v. Evatt* (1945), 324 U.S. 652, 663, 664, is mere "dicta" and that,

> "the *Brown* case must be considered in the light of the times and condition when it was decided" (*Brown v. Maryland,* 12 Wheat (U.S.) 419).

Counsel, since then, abandoned this specious argument and now urges that the determinations of the Tax Commission,

> "increased assessments for 1966 against the several respondents from $3,065.810 to $5,310,00. The combined increases totaled $2,244,990."

and further points out that,

> "in the aggregate, additional local taxes for 1966 based on said increases amounted to $53,817.14 for the City of Detroit, $42,825.62 for the Detroit Board of Education, and $19,901.93 for Wayne County."

(See Petitioners' Petition for Writ of Certiorari, page 7.)

We submit that the express mandate of the Constitution of the United States cannot be brushed aside as a matter of expediency. Professor Benjamin F. Wright of Harvard University in, "The Growth of American Constitutional Law" at page 54 shows that there was no change in the law since *Brown v. Maryland,* 12 Wheat. 419 (1827). Mr. Justice Frankfurter in *Youngstown Sheet & Tube Co. v. Bowers,* 358 U.S. 534 affirms the same.

He further urges on page 54:

> "Marshall was not opposed to state regulation of commerce, provided it in no way threatened the freedom of commercial intercourse among the states and with foreign nations. If there was even a remote possibility that the states' action would tend

> toward a restoration of 'the oppressed and degraded state of commerce previous to the adoption of the Constitution,' then the statute should be declared void."

In other words, to deviate from the cardinal principles of *Brown, supra,* amounts to a reversion to "the oppressed and degraded state of commerce previous to the adoption of the Constitution."

At pg. 232, Professor Wright points out that all state acts which interfered with the commerce clause since 1937 were "held unconstitutional" for the following reasons:

> "Almost all of the remaining cases in which state acts have been held unconstitutional by the Court since 1937 were decided under the commerce clause and every one of the seven commerce cases involved a state tax which in some fashion interfered with interstate commerce or extrastate business. These acts were among those which have demonstrated of recent years a tendency toward the erection of barriers to interstate trade, or, as has been said with extravagant alarm, toward the Balkanization of the United States. That unhappy condition does not seem just around the corner, but the search by the states for new sources of revenue in an age when business continues to transcend state lines has produced problems to which the solution is not yet clear."

Counsel for Petitioners in the instant case is in substance seeking to effect "the Balkanization of the United States" in order to increase the revenues under the *ad valorem* taxes of the City of Detroit in disregard of the cardinal principles laid down in the *Brown* case, *supra.*

In the next section, we shall reiterate the argument we presented before the Michigan Court of Appeals in support of our position. (Appellants are now respondents.)

Historically, the crucial question now before the Court has been answered as far back as 1789 by the Framers of the Constitution at the Philadelphia Convention which took measures to make the United States a free trade area and to withdraw from the States the selfish exercise of power over foreign trade, both import and export. They accomplished this by two provisions in the Constitution: the Commerce Clause and the Import-Export Clause. Mr. Justice Frankfurter, in *Youngstown Sheet and Tube v. Bowers Tax Commission,* 358 US 534 (1958) points out that in dealing with foreign commerce the Constitution imposed upon the States rigorous restrictions which hardly require judicial construction:

> "It rigorously confined the States to what might be 'absolutely necessary', the only constitutional permission in terms so drastically limited, and beyond this permission of what is 'absolutely necessary' state action was barred except by consent of Congress as expressive of the national interest. Thus, hardly any room was left by the Constitution for judicial construction of the command, 'No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws. . . .' This strict limitation on the States was still further qualified by the requirement that the 'net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.'"

The meaning of the language in the Import-Export Clause of the Constitution, above quoted, received judicial con-

struction as far back as 1827 in *Brown v. Maryland,* 12 Wheat. (US) 419, 6 L ed 678 (1827). In that famous case, Chief Justice Marshall established the cardinal principle that a State may not tax imports from foreign countries while retained by the importer in their original package or form prior to the use of the goods or their sale. This landmark decision was followed by the United States Supreme Court without a single deviation since then in about twelve subsequent decisions in our entire history.

Another landmark decision in which the Import Clause has been authoritatively interpreted by the Supreme Court as in *Brown v. Maryland* is *Hooven & Allison Company v. Evatt,* 324 US 652-694 in 1944. In this case, the Supreme Court in a definitive decision, described an importer in a "constitutional sense". The Court stressed that:

> "In determining the meaning and application of the constitutional provision, we are concerned with matters of substance not of form. When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected."

The last case which left *Brown v. Maryland* and the *Hooven & Allison* cases undisturbed issued by the Supreme Court in 1958 is *Youngstown v. Bowers,* 358 US 534 (1958) which presents a different set of facts than the case under consideration. We maintained from the very inception of this lawsuit that the facts in our case come squarely within the boundaries and rationale of *Hooven & Allison* which stressed that:

> "Constitutional rights will not be decided upon the form of a contract, *but rather upon its substance and the actual course of dealing between the parties pursuant thereto.*" (Emphasis added.)

Hooven further held: "It is enough for present purposes that the merchandise in this was imported; and that petitioner *was the efficient cause of its importation, the purpose and effect of which was petitioner's acquisition of the merchandise for its manufacture into finished goods*" (emphasis added). (In our case the imported steel was for sales.) It further stressed:

> "Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes as in this case the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in one case than in the other is to ignore the constitutional purpose and substitute form for substance."

The City of Detroit, in total disregard of the judicial construction given by the Supreme Court to the Import-Export Clause, in *Brown v. Maryland* in 1827, and in all subsequent decisions devised its own policy to determine tax immunity under the United States Constitution under the "guide lines" formula referred to above.

It is quite obvious to any student of the Constitution that the meaning of the provisions of the "guide lines" drafted by the Corporation Counsel have as much relationship to the rationale laid down by the Supreme Court in *Brown v. Maryland* as a copy of Mickey Mouse has to a fresco by Michelangelo.

It is undisputed that two accountants (Mr. Taylor and Mr. Claypoole), of the Assessor's office were authorized to examine Appellants' records under the above "guide lines" which is labeled as an "audit" and after the completion of the audit they held that Appellants were not entitled to tax immunity. We have cited the testimony of the accountants for City of Detroit and their uttter misconception of the material facts and law which they displayed under cross-examination.

The Common Council sitting as a Review Board rejected the findings of the auditors but they advised Counsel for the Board of Assessors to appeal the case to the Michigan State Tax Commission for a ruling.

It should further be observed that the State Tax Commission in its rulings and the Attorney General did not charge Appellants with failing to meet the "guide lines" which are a Simon-pure invention of plaintiffs-appellants. The record discloses that the Common Council and later the State Tax Commission openly and candidly disclaimed legal sophistication to qualify them to decide the complex constitutional issue involved in this lawsuit.

The Attorney General in the Brief admits that the steel in question originated in foreign countries and were shipped directly to the port of Detroit without any stoppage in transit, and further admits that none of the steel in question was used by appellants "in a manufacturing process" and were imported strictly for sale.

From the foregoing, it is obvious that the Attorney General was fully cognizant of the fact that the State Tax Commission failed to make a proper finding as it is required to do under the Statute. In *Pavilion Apartments, Inc. v. State Tax Commission*, 373 Michigan 601 (1964), the Supreme Court held as follows:

> "An administrative agency hearing affecting the property of a party does not meet the minimum requirements of due process if the affected party is not afforded an opportunity to know, test, explain, or refute all of the evidence which may be relied upon by the administrative agency in reaching its decision."

In *Saginaw Broadcasting Company v. Federal Communication Commission*, 96 F 2d 554:

> "When a decision is accompanied by finding of fact, the reviewing court can decide whether the decision reached by the court or commission follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence. In the absence of finding of facts, the reviewing tribunal can determine neither of these things. The requirement of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to the facts and law." (See *New Jersey Bell Telephone Company v. Communication Workers of America*, Supreme Court of New Jersey, 1950, 5 New Jersey 354, 75 A 2d 721.)

In this connection, Justice Frankfurter, in *Secretary of Agriculture v. United States*, 347 US 645 (1945), asserted:

> "Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency
>
> . . .
>
> *We must know what a decision means before the duty becomes ours to say whether it is right or wrong.*" (Emphasis added.)

We are cognizant of the fact that men, to a great extent, believe what they want to believe; deep-seated preferences and beliefs are difficult to remove from one's mind. The

lawyer who is familiar however with the rule of reason cannot reject as fallacious the evidence of the senses, the physical experience gained by means of the eye and ear, hand and brain. It logically follows that one cannot accept a medley of *ad hoc* conclusions as facts. The City and the State are not beyond good and evil nor are they beyond the necessity of proof.

We respectfully submit that *Brown v. Maryland* and *Hooven & Allison* embody the reasons, the law and unanswerable logic in support of our position. We are aware of the fact that thoughtful thinking is a process, a ladder, a means to reach the proper legal conclusions.

We submit that the material facts in our case, in the light of the language of the Supreme Court in *Hooven & Allison* fully support our position. We categorically deny appellee's contention that a designation of appellants as "buyer" and the authorized agent of the foreign mill as "seller" affects the merits of this case. We further deny that the simple, compact, logical statement of the law which carry conviction and force in *Hooven & Allison* can be characterized as "mere dicta".

We maintain that the *Hooven & Allison* and *Brown* decisions embody the command of the United States Supreme Court and fully support our legal position.

VII. CONCLUSION

Counsel for Petitioners has failed to advance any new facts or law in the present proceeding. The Michigan Court of Appeals has fully considered the Briefs and arguments of counsel for Petitioners, and the Attorney General, and set aside the ruling of the State Tax Commission. The Attorney General since then abandoned the contest and failed to join counsel for Petitioners in the present proceeding.

The Michigan Supreme Court in the denial of the Application for Leave to Appeal held that:

> "Plaintiffs and Appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous." (See Appendix C, *infra.*)

It is thus obvious that Petitioners' case has received the critical judicial scrutiny of the two highest tribunals in the State of Michigan which held it as without merit.

In the light of the foregoing, the Respondents respectfully pray that the Petition for Writ of Certiorari filed by Petitioners be denied with costs and attorney fees to Respondents.

Respectfully submitted,

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Dated June 30, 1969

APPENDIX A

OPINION OF MICHIGAN COURT OF APPEALS DECEMBER 2, 1968

STATE OF MICHIGAN
COURT OF APPEALS
DIVISION I

City of Detroit, a municipal corporation, Board of Assessors of the City of Detroit,
Plaintiffs-Appellees,
Michigan State Tax Commission,
Appellee,
v.
Kenwal Products Corporation, a Michigan Corporation,
Defendant-Appellant, et al.

No. 3,323

Before: T. G. Kavanagh, P.J., Burns and Fitzgerald, J.J.

Burns, J.

Eleven Detroit steel warehousing companies appeal by leave from tax commission decisions which ordered the value of certain steel to be placed on the city of Detroit personal property assessment rolls. The steel in question was shipped from foreign ports to Detroit where after clearing customs it was delivered to appellants' warehouses and stored for resale. Appellants claim that the steel was immune from property taxes because of US Const, art 1, §10, cl. 2, and cases which have interpreted that provision.

In *Brown v. Maryland* (1827), 25 US 419 (6 L ed 678), the Supreme Court invalidated a state licensing tax and held that a state could not tax imports as long as the property remained in its original form or package. *Low v. Austin* (1872), 80 US 29 (20 L ed 517), expanded the principles of *Brown v. Maryland* to prohibit states from levying *ad valorem* taxes on goods which have not lost their character as imports. See also *City of Detroit v. Lake Superior Paper Company* (1918), 202 Mich 22. Subsequent to *Brown v. Maryland, supra, it has become well-established* that imports lose their constitutional immunity when the importer (1) sells them or (2) "breaks up the packages" or (3) puts them to the use for which they were imported. *Youngstown Sheet & Tube Company v. Bowers* (1959), 358 US 534 (79 S Ct 383, 3 L ed 2d 490).

At the time of assessment in the present cases it appears that the imported steel was in its original package and that it was not being put to any use for which it was imported. The city of Detroit contends, and the tax commission so held, that domestic based companies imported the steel and sold it to appellants, thereby making the steel lose its character as an import. Appellants argue that they are the importers.

The United States Supreme Court spoke to the issue of who is an importer in *Hooven & Allison Company v. Evatt* (1945), 324 US 652, 663, 664 (65 S Ct 870, 89 L ed 1252):

> "When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers and businessmen that vast quantities of merchan-

dise are annually imported into this country by purchasers resident here, for sale or manufacture here. Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one case than in the others, is to ignore the constitutional purpose and substitute form for substance. * * *

"It is enough for present purposes that the merchandise in this case was imported; and that petitioner was the efficient cause of its importation, the purpose and effect of which was petitioner's acquisition of the merchandise for its manufacture into finished goods. We conclude that petitioner was the importer, and that the merchandise in its hands was entitled to the constitutional tax immunity, surviving delivery of the imports to it."

There are many factual similarities between the *Hooven Case, supra,* and these consolidated steel cases. In both instances the taxpayer placed orders with domestic corporate intermediaries for merchandise which originated in a foreign country. The price included charges for ocean freight, insurance, and customs. The goods were specifically marked when they left the foreign port to identify the product for the taxpayer, except in a few instances when the sales took place while the steel was enroute. In *Hooven,* the contract for sale between the domestic seaboard company and the Ohio manufacturer read, "for the account of" the foreign producer. Payment went directly from the Ohio manufacturer to the foreign producer and credit was extended by the foreign company.

In the present cases the appellants contracted with companies which extended their own credit and received all payments for their own accounts. The precise relationship between the domestic companies and the foreign mills (or brokers in some cases) does not clearly appear on the records, but it can be discerned that the domestic concerns entered into separate and distinct contracts with the foreign sellers.

There are two transactions involved in the *Kenwal Case* that differ from the other transactions in these consolidated cases. Kenwal entered into a joint venture with M. W. Zack Metal Company and the Donovan Wire & Iron Company. Zack and Donovan each ordered an entire shipload of steel through intermediaries, with the agreement that Kenwal would participate by taking half of each shipload. For convenience, all of the documents were made in the names of Zack and Donovan. We see no reason to treat these transactions any differently than the other sales involved in these consolidated cases.

In determining who is the "efficient cause" of importation in the constitutional sense, we must look beyond matters of form to the substance of the transaction. Perhaps the most significant substantive matter which the Supreme Court emphasized in *Hooven, supra,* 661, was the fact that performance of the contract called for, and necessarily resulted in, importation of the merchandise. Appellants' contracts with the domestic intermediaries specified that the steel was to be shipped from a foreign country or was already en route directly to the appellants. Performance of these contracts, then, as in *Hooven,* called for, and necessarily resulted in, importation. In our opinion the transactions in these cases fall within the scope of the Hooven decision.

The orders of the tax commission are vacated.

APPENDIX B

ORDERS OF MICHIGAN STATE TAX COMMISSION

(Two orders applicable to the assessments placed against Ambassador Steel Company are set forth which orders are typical of those issued in the case of each of respondents herein for 1966, with exception of several against whom only a single order was issued.)

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 22-5610 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 20, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Ambassador Steel Company, 12211 Coyle Street, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C.L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which

hearing the taxpayer of the property in question was represented.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5610 asks the current assessment of $289,380 to be raised to $530,050 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports. . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely cur-

rent by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $1,060,100 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $479,700. Since the proposed assessment per Petition No. 22-5610 is $530,050 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates

the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C.L. of Mich. 1948, or an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $479,700 be placed upon the assessment roll as the true and lawful value of such property.

February 2, 1967

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 22-5611 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 20, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, to be assessed to Ambassador Steel Company, 12211 Coyle Street, Detroit.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5611 asks the current assessment of $415,730 to be lowered to $414,610 because of information revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer on a title retaining sales contract from an importer whereby the material has been committed to the exclusive use of the taxpayer as long as he adheres the terms of the contract and thereby the material has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that the title has never passed to them from the importers and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports. . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C.L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in

question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion the Commission that the undisputed true cash value of the property involved is $829,220 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $375,200. Since the proposed assessment per Petition No. 22-5611 is $414,610 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $375,200 be placed upon the assessment roll as the true and lawful value of such property.

February 2, 1967.

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

NOTE: These 2 orders cover Respondents Ambassador Steel and Ewald Steel.

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967, at Lansing, Michigan.

In Re Petition No. 22-2339 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Ewald Steel Company, 12995 Hillview, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the

assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-2339 asks the current assessment of $650,000 to be raised to $889,700 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

"No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment rolls as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undis-

puted true cash value of the property involved is $1,779,390 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $805,200. Since the proposed assessment per Petition No. 22-2339 is $889,700 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $805,200 be placed upon the assessment roll as the true and lawful value of such property.

February 1, 1967.

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967, at Lansing, Michigan.

In Re Petition No. 22-2338 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Ewald Steel Company, 12995 Hillview, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-2338 asks the current assessment of $158,720 to be raised

to $669,050 because of additional value revealed in an audit by a member of the Board of Assessors staff. This requested assessment of $669,050 was revised at the hearing to $643,160.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports and Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc.,

there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $1,286,320 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $582,100. Since the proposed assessment per Petition No. 22-2338 is $643,160 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatified and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C.L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $582,-100 be placed upon the assessment roll as the true and lawful value of such property.

February 1, 1967.

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

APPENDIX C

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Present: the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court (T. G. Kavanagh, J., not participating), the application for leave to appeal is considered, and the same is hereby denied, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is denied, as thereby being moot.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Harold Hoag,
Deputy Clerk.

(Seal)

APPENDIX D

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 19th day of May in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court, the motion by the city of Detroit and the Board of Assessors of the city of Detroit, plaintiffs and appellants, to stay enforcement of an order of this Court pending petition for certiorari to the Supreme Court of the United States is considered, and the same is hereby denied, as no immediate emergency has been alleged or shown.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 21st day of May in the year of our Lord one thousand nine hundred and sixty-nine.

Donald F. Winters,
Clerk.

(Seal)